

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2001-523

August 20, 2001

MAINE RESTAURANT ASSOCIATION  
Application for License to Operate as a  
Competitive Electricity Provider

ORDER GRANTING LICENSE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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## **I. SUMMARY**

In this Order, we license the Maine Restaurant Association to operate as a competitive electricity provider furnishing aggregator/broker services in Maine pursuant to Chapter 305 of the Commission's Rules.

## **II. APPLICATION**

On July 26, 2001, the Maine Restaurant Association (MERA) applied to the Commission for a license to operate in Maine as a competitive electricity provider, as provided in Chapter 305. On August 8, 2001, MERA filed additional information to supplement its earlier filing.

### **A. Type of Service Proposed**

MERA proposes to act as an aggregator or broker for electric service provided to the public at retail. MERA's application states that the proposed licensee plans to market "electric power education, safety seminars, energy savings seminars / plans / products" to medium and large commercial and industrial customers in the transmission and distribution utility service territories of Central Maine Power Company, Bangor Hydro-Electric Company, and Eastern Maine Electric Cooperative.

### **B. Fee Paid**

With its application, MERA paid a \$100 fee to the Commission, as required by section 2(C)(5) of Chapter 305.

## **III. FINANCIAL ISSUES**

### **A. Security**

MERA will operate as an electricity broker/aggregator in Maine. Pursuant to section 2(B)(1)(a)(i) of Chapter 305, MERA does not have to furnish a security instrument to the Commission.

B. Showing of Professional Capability

MERA will operate as an electricity broker/aggregator in Maine; accordingly, MERA is required to demonstrate its professional responsibility pursuant to section 2(B)(1)(b) of Chapter 305. MERA filed information to demonstrate its professional responsibility. We have reviewed that information and find that it complies with the requirements of Chapter 305. MERA stated that it will not hold retail consumer funds, and accordingly is not required to demonstrate its financial capability pursuant to section 2(B)(1)(b) of Chapter 305. If MERA wishes to hold consumer funds in the future, it must first obtain authority from the Commission.

**IV. TECHNICAL ISSUES**

A. Showing of Technical Capability

MERA will operate as an electricity broker/aggregator in Maine; accordingly, MERA is required to demonstrate its technical fitness to conduct its proposed business pursuant to section 2(B)(2)(c) of Chapter 305. MERA filed information to demonstrate its technical capability. We have reviewed that information and find that it complies with the requirements of Chapter 305.

B. Resource Portfolio

MERA will operate as an electricity broker/aggregator in Maine. Pursuant to section 2(B)(4) of Chapter 305, MERA is not required to demonstrate an ability to meet the resource portfolio requirement of 35-A M.R.S.A. § 3210 and the portfolio requirement reporting rules in Chapter 311 of the Commission's rules.

**V. CONSUMER PROTECTION ISSUES**

A. Showing of Fitness

In its application, MERA provided information required by Chapter 305 section 2(B)(3) related to enforcement proceedings and consumer complaints. We have reviewed that information and find that it meets the requirements of Chapter 305.

B. Ability to Comply with Consumer Protection Rules

NERA will operate as an electricity aggregator/broker in Maine. Pursuant to section 2(B)(6) of Chapter 305, NERA is not required to demonstrate its ability to comply with applicable consumer protection requirements.

C. Do-Not-Call List

Chapter 305 section 4(I) states that “[t]he Commission will maintain or cause to be maintained a ‘Do-Not-Call’ list of customers who have requested -- orally, in writing, or by commercially accepted electronic means -- that they not receive telemarketing calls from competitive electricity providers.” We require that licensees use do-not-call list mechanisms already in place nationally to satisfy that requirement. To the extent that it telemarkets to Maine consumers, NERA shall comply with the following requirements.

NERA must comply with the requirements of the Telephone Consumer Protection Act,<sup>1</sup> the Telemarketing and Consumer Fraud and Abuse Prevention Act,<sup>2</sup> and related rules of the Federal Communications Commission<sup>3</sup> and Federal Trade Commission.<sup>4</sup> NERA must comply with those requirements and must maintain its own do-not-call list as required by those laws and rules, for all intrastate and interstate telemarketing of Maine consumers, including both residential and business consumers. NERA shall not telemarket to Maine consumers on that list, as required in Chapter 305 section 4(I)(1). NERA shall update its do-not-call list at least monthly, and maintain copies of that list for at least six months. NERA shall provide a copy of that list to the Commission upon request.

Further, each month, NERA must obtain listings of Maine consumers who have arranged to be included on the do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc.<sup>5</sup> NERA shall not telemarket to Maine consumers on that list, as required in Chapter 305 section 4(I)(1).

D. Other Consumer Protections

Competitive electricity providers must provide certain protections to consumers. As a condition of licensing, NERA:

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<sup>1</sup>47 U.S.C. § 227

<sup>2</sup>15 U.S.C. §§ 6101-6108

<sup>3</sup>47 CFR 64.1200

<sup>4</sup>FTC Telemarketing Sales Rule, 16 CFR Part 310

<sup>5</sup>Telephone Preference Service, Direct Marketing Association, Inc., P.O. Box 9014, Farmingdale, NY 11735-9014

1. shall obtain a consumer's authorization before serving the consumer;
2. may not release to any other entity, other than for purposes of debt collection or credit reporting pursuant to state and federal law or to law enforcement agencies pursuant to lawful process, any personal information regarding a customer, including name, address, telephone number, usage and historical payment information, without the consent of the customer;
3. must comply with the provisions of the Maine Unfair Trade Practices Act, Title 5, chapter 10;
4. may not collect or seek to collect unreasonable costs from a customer who is in default;
5. must comply with all applicable provisions of the federal Equal Credit Opportunity Act, 15 United States Code, Sections 1691 to 1691f;
6. may not initiate a telephone solicitation call to a consumer who has notified the competitive electricity provider of the consumer's wish not to receive telephone solicitation calls made by or on behalf of the competitive electricity provider;
7. must provide at least once annually to a customer any information disclosures required by the Commission by rule; and
8. must comply with any other applicable standards or requirements established by the Commission by rule.

35-A M.R.S.A. § 3203(4-A).

To the extent that MERA provides services to residential consumers or small commercial consumers in Maine, in addition to the requirements stated above, as a condition of licensing, MERA:

1. may not terminate generation service without at least 30-day prior notice to the consumer;
2. must offer service to the consumer for a minimum period of 30 days;
3. must allow the consumer to rescind selection of the competitive electricity provider orally or in writing within 5 days of initial selection;
4. may not telemarket services to the consumer if the consumer has filed with the Commission a written request not to receive telemarketing from competitive electricity providers;
5. must provide to the consumer within 30 days of contracting for retail service a disclosure of information provided to the Commission pursuant to rule in a standard written format established by the Commission; and
6. must comply with any other applicable standards or requirements adopted by the Commission by rule or order.

35-A M.R.S.A. § 3203(4).

## **VI. ADDITIONAL PROVISIONS**

MEERA must comply with all applicable requirements and limitations in Chapter 305 not explicitly waived in this Order. MEERA must also comply with all requirements and limitations in other applicable Commission rules, including any applicable future changes in Maine laws and Commission rules, and in other parts of this Order.

## **VII. ORDERING PARAGRAPHS**

Accordingly, we

1. license the Maine Restaurant Association to operate as a competitive electricity provider pursuant to Chapter 305 of the Commission's Rules; under this license, the Maine Restaurant Association may operate only as an aggregator/broker to provide service to consumers in the service territories of Central Maine Power Company, Bangor Hydro-Electric Company, and Eastern Maine Electric Cooperative in Maine;
2. order that the Maine Restaurant Association may not hold retail consumer funds;
3. order the Maine Restaurant Association to comply with all Do-Not-Call List requirements contained in Part V(C) of this Order to the extent that it telemarkets to Maine consumers;
4. order the Maine Restaurant Association to observe all other consumer protection requirements contained in Part V(D) of this Order; and
5. order that this license is effective on the date of this Order and valid until revoked by the Commission pursuant to section 3(A)(4) of Chapter 305, or abandoned by the licensee pursuant to sections 2(C)(9) and 2(C)(11) of Chapter 305 of the Commission's Rules.

Dated at Augusta, Maine, this 20<sup>th</sup> day of August, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Nugent  
Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.